

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3784 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

VINODCHANDRA AMBALAL SHAH

Versus

STATE OF GUJARAT

Appearance:

MR KS JHAVERI for Petitioner
None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/09/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the petitioner.

#. The petitioner, a Sales Tax Officer, Class-II, of the
Sales Tax Department of the Government of Gujarat, by
this petition is praying for directions to the

respondents to include his name above Shri L.B.Makhijani between sr.no.300 and 301 of the seniority list of Sales Tax Officers (Class-II) dated 23rd May, 1985. Further prayer has been made to direct the respondents to give all consequential benefits including promotion to the cadre of Sales Tax Officer (Class-I).

#. This, the petitioner is claiming on the basis of his promotion made to the post of Sales Tax Officer, Class-II, under the order of the Finance Department, Government of Gujarat, Gandhinagar, dated 1st October, 1976. Under the order aforesaid, the petitioner was given promotion only on temporary basis with other persons. It is not in dispute that the petitioner was served with chargesheet in the year 1982 and he was penalized with stoppage of one increment with future effect under the order dated 1.4.83. It is a different matter that the petitioner has labelled it to be only a minor penalty but it is in substance a major penalty because it is stoppage of one grade increment with future effect. Be that as it may, the petitioner filed appeal against this order before the Tribunal which came to be partly allowed and this penalty of stoppage of one increment with future effect was substituted by the penalty of stoppage of one increment without future effect. So it was now a penalty of minor nature. Admittedly, the criteria for promotion to the post of Sales Tax Officer (Class-II) is proved merits and efficiency and though the facts are not stated, but there are all the possibilities that when the matter was considered for adjudging suitability of officers for promotion to the post of Sales Tax Officer, Class-II, the petitioner could not have been held suitable over those persons who are alleged juniors for this minor penalty and rightly he was not given seniority on the post of Sales Tax Officer (Class-II) from 1.10.76. It is not a case where adhoc promotion follows by regular promotion. The period of adhoc promotion cannot be counted for seniority in all the cases. The rule is otherwise that for the seniority the service is to be counted from the date on which the officer has been regularly promoted. In this case, in view of the penalty which has been imposed upon the petitioner for the alleged misconduct he would not have been adjudged suitable for promotion on the post of Sales Tax Officer (Class-II) from 1.10.76. There is all possibility, as it is also not the case that he would have been adjudged suitable for promotion after that date and he is entitled for seniority from the date on which he was adjudged suitable and taken on regular basis.

#. There are two other grounds on which this petition deserves to be dismissed. The petitioner is claiming seniority above Shri L.B.Makhijani but he has not been impleaded as a party to this petition. If any relief of the nature as prayed for is granted in favour of the petitioner, it will adversely affect that person as well as many other persons. Secondly, this seniority list has been finalized in the year 1985. This petition is filed after five years. This unexplained delay is also another ground for dismissal of this petition. Reference fruitfully may have to two decisions of the Hon'ble Supreme Court in the case of State Bank of Indore v. Govindrao, reported in (1997) 2 SCC 617 and in the case of Jagdish Lal v. State of Haryana (1997) 6 SCC 538. Filing of representations will not keep the cause surviving. Reference may have to the decision of the Hon'ble Supreme Court in the case of State of Haryana and ors.v. Ajay Walia (Ms.) reported in (1997) 6 SCC 255.

#. In the result, this special civil application fails and the same is dismissed. Rule discharged. As none appears for the respondents, no order as to costs.

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(sunil)